IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 19TH NOVEMBER 2007 / 28TH KARTHIKA 1929

WP(C).No. 28651 of 2007(J)

PETITIONER:

SPENCER'S RETAIL LTD.,
REGIONAL OFFICE, 30/286,
PANICKER FOUNDATION, PETTA JUNCTION,
TRIPUNITHURA, KOCHI-38, REP. BY ITS BUSINESS
HEAD-KERALA, RAJU MENON, AGED 44 YEARS,
SON OF LATE M.R.NAIR.

BY ADV. SRI.H.B.SHENOY
SRI.B.ASHOK SHENOY

RESPONDENTS:

CORPORATION OF KOCHI, REPRESENTED BY
ITS SECRETARY, PARK AVENUE,
ERNAKULAM, KOCHI-682011.

BY ADV. SMT.M.K.PUSHPALATHA,SC,COCHIN CORPORATI

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 19/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE,J.

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W.P.(C) No.28651 of 2007

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Dated: 19th November, 2007

JUDGMENT

This Writ Petition has been filed by M/s.Spencer's Retail Limited, a company engaged in the business of sale on retail basis of vegetables, fruits, provisions, food articles etc. through its retails super market outlets situated all over India. They submitted Exts.P1 and P2 applications for necessary licences to the respondent-Corporation for the commencement and conduct of a retail outlet on the market road, Ernakulam. Exts.P1 and P2 were submitted on 27.7.2007. They point out that till date (26.9.2007) no orders on Exts.P1 and P2 have been communicated to them. Relying on the deeming provisions contained in Sections 447(6) and 492(15) of the Kerala Municipality Act, the petitioner contend that they are entitled to be granted formal licence in the prescribed forms pursuant to Exts.P1 and P2 since for conduct of business it is absolutely necessary that such licences in the prescribed forms are displayed in the shop.

2. A statement has been filed on behalf of the respondent-Corporation wherein at paragraphs 2 and 3 it is contended as follows:

"2. It is respectfully submitted that this respondent registered Exhibit P1 and Exhibit P2 applications submitted by the petitioner. But the same could not be granted on account of the fact that the

Government is now implementing some protective measures to safeguard the interest of small scale business people and general public, which are now being adversely affected due to the enormous increase of monopolic industrialists both Indian and Foreign. Pursuant to that most of the local self Government bodies in Kerala took a decision to cancel the licences issued to Indian and Foreign monopolistic industrialists conducting business in provisions, fruits, vegetables, stationery items etc.

3. Similarly the Council of Corporation of Kochi also by Resolution No.1 (E) dated 13.7.2007 took a decision to the effect that the licences issued to those large scale monopolic industrialists, Indian and Foreign who are conducting such business, should be cancelled and further not to issue licences for fresh applicants. Hence the application submitted by the petitioner is pending consideration before the standing committee for Health and proceedings will be finalised within a short period."

As regards the demand draft of Rs.5,000/- which the petitioner claims to have sent over to the Corporation against Ext.P3 licence upon expiry of the 30 days period after issuance of Exts.P1 and P2, it is contended that the demand draft has been returned forwith.

3. I have heard the submissions of Mr.Thomas Makeel, counsel for the petitioner and Smt.M.K.Pushpalatha, Standing Counsel for the Kochi Corporation.

4. Drawing my attention to Sections 447(6) and 492(15) and to the various documents placed on record, learned counsel for the petitioner submitted that the general resolution referred to in the statement of the Corporation will not be enough. It is for the Corporation to reject the petitioner's applications and communicate

the orders of rejection to them and since such a rejection order has not been made within the statutory period of 30 days, the petitioner's applications are deemed to have been allowed by virtue of the above provisions. Counsel therefore requested that a direction be issued to the Corporation in that regard.

5. Learned Standing Counsel for the Corporation submitted that it is pursuant to a policy decision taken by the Government that the Corporation adopted resolution No.1 (E) dated 13.7.2007 not to issue licence to large scale monopolistic industrialists, Indian and Foreign, conducting retail business and to cancel the licences already issued. In the light of resolution No.1 (E) dated 13.7.2007 the petitioner's applications Exts.P1 and P2 are not liable to be considered favourably.

6. The submissions of the learned counsel for the petitioner founded as they are on statutory provisions have some force. But at the same time expiry of the statutory period of 30 days will not stand in the way of the Corporation rejecting the licence applications Exts.P1 and P2 subsequently. But then the orders rejecting the applications are not to be communicated to the petitioner so as to enable them to pursue statutory remedies against the orders of

rejection. Under these circumstances, the Writ Petition will stand disposed of with the following directions:

1. The respondent-Corporation is directed to issue forthwith to the petitioner formal licence in the prescribed forms in respect of Exts.P1 and P2 applications for licences deemed to have been allowed under Exts.P1 and P2 by virtue of Sections 447(6) and 492(15) of the Kerala Municipality Act. Formal licence as ordered above shall be issued to the petitioner within ten days of receipt of copy of the judgment.

2. The respondent-Corporation is also directed to communicate to the petitioner formal orders of rejection on Exts.P1 and P2, if any, within one month of the petitioner producing a copy of this judgment. If such rejection orders are received by the petitioner, it will be open to the petitioner to pursue his statutory remedies on those rejection orders.

The compliance of direction No.1 will be subject to the final orders to be passed by the Corporation on Ext.P1 as mentioned under direction No.2 above.

srd **PIUS C.KURIAKOSE, JUDGE**